

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IN RE:

NICOLINE K JARAMILLO

Debtor

Chapter 13

Case No. 19-10400-BFK

USAA FEDERAL SAVINGS BANK

Movant

v.

NICOLINE K JARAMILLO

1615 ANDERSON RD.

MCLEAN, VA 22102

(Debtor)

MARK E JARAMILLO

7349 PRICKLEY PEAR DRIVE

EL PASO, TX 79912

(Co-Debtor)

THOMAS P. GORMAN

300 N. WASHINGTON ST., STE. 400

ALEXANDRIA, VA 22314

(Trustee)

Respondents

**MOTION FOR RELIEF FROM AUTOMATIC STAY AND CO-DEBTOR AUTOMATIC
STAY PURSUANT TO 11 U.S.C. § 1301(c)(3)**

USAA Federal Savings Bank (“Movant”) by undersigned counsel, respectfully moves this Honorable Court to terminate the Automatic Stay and the Co-Debtor Automatic Stay as to the real property located at 7349 Prickley Pear Drive, El Paso, TX 79912 (“Property”), and, as grounds therefore, states as follows:

Daniel Eisenhauer, Esq., Bar # 85242
PO Box 2548
Leesburg, VA 20177
(703) 777-7101

1. This proceeding seeking relief under 11 U.S.C. § 362(d) and 11 U.S.C. § 1301(c)(3) is a contested matter within the meaning of Fed. R. Bankr. P. 4001 and 9014, and this court has jurisdiction over this matter pursuant to 28 U.S.C. § 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G) and (b)(2)(O). Venue is proper pursuant to 28 U.S.C. § 1409(a).

2. On February 6, 2019, the above named Debtor, Nicoline K Jaramillo (“Debtor”), filed in this court a Petition under Chapter 13 of the United States Bankruptcy Code. Thomas P. Gorman was appointed Chapter 13 trustee.

COUNT 1
RELIEF FROM AUTOMATIC STAY

3. On or about February 14, 2013, the Nicoline K Jaramillo executed and delivered to USAA Federal Savings Bank a Note in the amount of TWO HUNDRED THREE THOUSAND TEN DOLLARS AND NO CENTS (\$203,010.00), plus interest at the fixed rate of 3.125% per annum, attorney’s fees, costs and late charges to be paid over thirty (30) years.

4. The Note was later transferred to Movant and Movant held the Note at the time of the foreclosure sale.

5. To secure the repayment of the sums due under the Note, Nicoline K Jaramillo and Mark E Jaramillo executed and delivered to USAA Federal Savings Bank a Deed of Trust dated February 14, 2013, encumbering the real property (“Property”) described as:

ALL THAT PARCEL OF LAND IN EL PASO COUNTY, STATE OF TEXAS, AS
MORE FULLY DESCRIBED IN DEED INST # 20100082588, BEING KNOWN AND
DESIGNATED AS .
LOT 9, BLOCK 84, WEST HILLS UNIT TWENTY THREE, AN ADDITION TO
THE CITY OF EL PASO, EL PASO COUNTY, TEXAS, ACCORDING TO THE MAP
OR PLAT THEREOF RECORDED IN VOLUME 78, PAGES 11 AND 11A, OF THE
REAL PROPERTY RECORDS OF EL PASO COUNTY, TEXAS.
A.P.N.: W14599908400900

which has the address of 7349 Prickley Pear Drive, El Paso, TX 79912.

6. That pursuant to 11 U.S.C. § 362(d)(1), upon request of a party in interest, the court shall grant relief from stay for cause, including lack of adequate protection of an interest in property of such party in interest.

7. That prior to Debtor filing the instant bankruptcy case and pursuant to a default in the terms of said Deed of Trust, a foreclosure sale was conducted on February 05, 2019.

8. At the foreclosure sale, the successful bid was in the amount of \$179,027.00. A copy of the Substitute Trustee's Deed is attached as **Exhibit A**.

9. Movant was the successful bidder at the aforementioned foreclosure sale.

10. That as a result of the foreclosure sale the Deed of Trust was extinguished under state law.

11. That as a result of the foreclosure, the subject property is not an asset of the estate.

12. The continuation of the Automatic Stay will cause Movant significant prejudice.

13. Cause exists to terminate the Automatic Stay to permit Movant to exercise its non-bankruptcy rights and remedies with respect to the Mortgage pursuant to § 362(d)(1) of the Bankruptcy Code.

COUNT II
RELIEF FROM CO-DEBTOR AUTOMATIC STAY

14. The allegations of paragraphs 1 through 13 are incorporated by reference herein.

15. Movant will be irreparably harmed by the continuation of the Co-Debtor Automatic Stay.

16. Cause exists to terminate the Co-Debtor Automatic Stay.

WHEREFORE, USAA Federal Savings Bank prays that this Court issue an order terminating or modifying the Automatic Stay under 11 U.S.C. § 362 and Co-Debtor Automatic

Stay under 11 U.S.C. § 1301, as to the property located at 7349 Prickley Pear Drive, El Paso, TX 79912, and granting the following:

That the Automatic Stay and Co-Debtor Automatic Stay, as to USAA Federal Savings Bank, relative to the property located at 7349 Prickley Pear Drive, El Paso, TX 79912 is hereby lifted.

That upon entry of this order USAA Federal Savings Bank, its successors and assigns, may pursue its state law remedies, including, but not limited to contacting the Debtor directly to discuss loss mitigation or beginning eviction proceedings at its sole discretion.

That the Order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

That entry of the order shall be effective immediately upon entry, notwithstanding the provisions of FRBP 4001(a)(3).

For such other relief as the Court deems just and equitable.

Date: August 21, 2019

Respectfully submitted,

/s/Daniel K. Eisenhauer

Daniel Eisenhauer, Bar # 85242

Orlans PC

PO Box 2548

Leesburg, VA 20177

(703) 777-7101

Attorneys for USAA Federal Savings Bank

deisenhauer@orlans.com

CERTIFICATE OF SERVICE

The undersigned states that on August 21, 2019, copies of the foregoing Motion for Relief were filed with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

Thomas P. Gorman
300 N. Washington St., Ste. 400
Alexandria, VA 22314
ch13alex@gmail.com
Bankruptcy Trustee

Ashvin Pandurangi
AP Law Group, PLC
211 Park Ave.
Falls Church, VA 22046
ap@aplwg.com
Debtor's Attorney

and I hereby certify that I have caused to be mailed by first class mail, postage prepaid, copies of the foregoing Motion for Relief to the following non-ECF participants:

Nicoline K Jaramillo
1615 Anderson Rd.
McLean, VA 22102
Debtor

Mark E Jaramillo
7349 Prickley Pear Drive
El Paso, TX 79912
Co-Debtor

/s/Daniel K. Eisenhower
Daniel Eisenhower, Esquire